CASE NO.: A 298/2009

IN THE HIGH COURT OF NAMIBIA

In the matter between:

AUGUST MALETZKY	**1ST APPLICANT**
VICKSON HANGULA	**2ND APPLICANT**
NICHOLAAS BURTSE	**3RD APPLICANT**
DORKA VICTORINE SHIKONGO	**4TH APLLICANT**
DESIREE BIANCA FORTUIN	**5TH APPLICANT**
YVONNE CATHERINE MOLLER	**6TH APPLICANT**
HEROLD SAMUEL GORASEB	**7THAPPLICANT**
ALBERT PETER BROCKERHOFF	**8TH APPLICANT**
WILHELMINA HENDRIETTE BROCKERHOFF	**9TH APPLICANT**
ANNA OUSEB	**10TH APPLICANT**
JULIUS OUSEB	**11TH APPLICANT**
RONNY R. HANGULA	**12TH APPLICANT**
MATHEUS HAUFIGU	**13TH APPLICANT**

FESTUS APRIL	**14TH APPLICANT**
SOPHIA DAKUNU NANGOMBE	**15TH APPLICANT**
and	
THE ATTORNEY GENERAL	**1STRESPONDENT**
MINISTER OF JUSTICE	**2NDRESPONDENT**
MINISTER OF REGIONAL LOCAL GOVERNMENT	
& HOUSING	**3RD RESPONDENT**
MESSENGER OF THE MAGISTRATE'S COURT	**4TH RESPONDENT**
DEPUTY SHERIFF OF THE HIGH COURT	**5TH RESPONDENT**
INSPECTOR GENERAL OF THE NAMIBIAN POLICE	**6TH RESPONDENT**
CLERK OF THE MAGISTRATE'S COURT: WINDHOEK	**7TH RESPONDENT**
MAGISTRATE JJF BRITSS	**8TH RESPONDENT**
REGISTRAR OF DEEDS	**9TH RESPONDENT**
JC VAN WYK ATTORNEY	**10TH RESPONDENT**
VAN DER MERWE & GREEF INC.	**11TH RESPONDENT**
FISHER QUAMBY & PFEIFER	**12TH RESPONDENT**
THEUNISSEN, LOUW & PARTNERS	**13TH RESPONDENT**
FIRST NATIONAL BANK OF NAMIBIA LTD	**14TH RESPONDENT**
STANDARD BANK OF NAMIBIA LTD	**15TH RESPONDENT**
NEDBANK	**16TH RESPONDENT**
SWABOU INVESTMENT PTY LTD	**17TH RESPONDENT**
BANK WINDHOEK	**18TH RESPONDENT**
BANK OF NAMIBIA	**19TH RESPONDENT**
LAW SOCIETY OF NAMIBIA	**20TH RESPONDENT**

THE CITY OF WINDHOEK	**21ST RESPONDENT**
NATIONAL HOUSING ENTERPRISE	**22ND RESPONDENT**
JAQUEL K NJEMBO	**23RD RESPONDENT**
FRANCOIS ERASMUS & PARTNERS	**24TH RESPONDENT**
ALEXANDER HOVEKA	**25TH RESPONDENT**
NAMFISA	**26TH RESPONDENT**
INFORMATION TRUST CORPORATION (PTY) LTD	**27TH RESPONDENT**
BRAKPAN PROPERTY DEVELOPMENT NO. 39 CC	**28TH RESPONDENT**
HILKA NUUGULU	**29TH RESPONDENT**
SISA NAMANDJE & CO	**30TH RESPONDENT**
ETZOLD-DUVENHAGE	**31ST RESPONDENT**
NAKAMEHLA ATTORNEYS	**32ND RESPONDENT**
THE OMBUDSMAN	**33RD RESPONDENT**
NEVES LEGAL PRACTITIONERS	**34TH RESPONDENT**

CORAM: **SHIVUTE, J**

Heard on: 2010.09.07

Delivered on: 2010.10.29

RULING – INTERLOCUTORY APPLICATION

SHIVUTE, J: [1] This matter started as an application by 15 Applicants seeking relief against 34 Respondents. The Applicants applied to the Court for an order in the following terms:

(1) Condoning non-compliance with the Rules of this Honourable Court.

(2) Declaring section 66(1)(a) of the Magistrates' Courts Act 32 of 1944 inconsistent with the Constitution to the extent that it authorizes and obliges the clerk of the court, if insufficient movable property has been found to satisfy the judgment debt, to issue a warrant of execution against immovable property constituting the home of the judgment debtor, where the debt is trifling or there are other and less invasive means of satisfying the judgment debt;

(3) Declaring that section 66(1)(a) of the Magistrates' Courts Act 32 of 1944 is to be read as though the following words appear at the end of that subsection: "**Provided that no immovable property which constitutes the home of the judgment debtor shall be subject to executing unless the court has so ordered, on good cause shown, with due regard to the provisions of the Constitution.';**

(4) Declaring Rule 45(1)(a) of the High Court is to be read as though the following words appear at the end of that subsection:'**Provided that no immovable property which constitutes the home of the judgment debtor shall be subject to execution unless the court has so ordered, on good cause shown, with due regard to the provisions of the Constitution.';** *(sic)*

(5) Declaring Rule 49(3) of the Magistrates' Court to be unconstitutional in that it bars indigent litigants from approaching the court for appropriate relief.

(6) Declaring that sale of a house below its reasonable market value, in execution of a judgment unconstitutional for violating Article 15, 16 and 95 of the Namibian Constitution.

(7) Declaring the Principle of double jeopardy unconstitutional for violating Article 16 and or alternatively Article 95 of the Namibian Constitution.

(8) Declaring the execution of eviction orders, not preceded by just and equitable discussions and where appropriate mediation have not been attempted unconstitutional for violating Articles 8, 13, 14, 15 and 95 of the Namibian Constitution.

(9) Declaring the prohibition of representation in courts of law of indigent members of the community, by duly qualified persons, other than legal practitioners registered with the Law Society, in terms of the Legal Practitioners Act of 1995, to be contrary to the right to a fair trial as envisaged in Article 12, Article 21 and Article 95 of the Constitution.

(10) Ordering that the addition of untaxed legal fees on Home Loan accounts to be illegal and unconstitutional for violating Article 13, Article 14, Article 15, Article 16 and Article 95 of the Namibian Constitution.

(11) Ordering the disconnection of water supply to homes to be in violation of the Constitutional Rights to adequate housing, dignity and Life and for violating Article 8, Article 13, Article 14, Article 15, Article 16 and Article 95 of the Namibian Constitution.

(12) Ordering the debits made to the home loan accounts in respect of illegitimate and disproportionate life insurance fees be contrary to the rights to own property as envisaged in Article 16 and Article 95 of the Namibian Constitution and that such premiums be credited towards the settlement of the principal home loan account, alternatively refunded to the respective applicants with interest at the rate of 20% per annum.

(13) Ordering all legal proceedings and decisions and executions of default judgments of the Respondents based on the application of above cited sections of the Magistrate's Court Act 32 of 1944 and all other default judgments are null and void and of no force and effect *ab initio*.

(14) Ordering the banks repayment of all untaxed and or unjustifiable legal fees deducted from the Home Loans in respect of each and every claim instituted against any particular bank herein cited.

(15) Ordering the Law Society to conduct a full scale investigation into the Trust and Business accounts of legal practitioners complained of in this application and or in complaints lodged with the Law Society by any one of the applicants in respect of untaxed legal fees derived from home loan accounts of unsuspecting mortgagees, and present such

report to this Honourable Court and take the necessary action as envisaged in its founding statute.

(16) Ordering the failure of banks to account for all payments made in respect of mortgage bonds to be unconstitutional for violating Article 16 of the Namibian Constitution.

(17) Declaring the arbitrary 'blacklisting' of debtors to be in violation of the Bill of Rights.

(18) Declaring all the Respondents who oppose this application to pay the costs or this application.

(19) Further and /or alternative relief. *(sic)"*

[2] The 1st, 2nd, 3rd, 6th, 7th, 11th, 16th, 17th, 18th, and 27th Respondents filed a notice in terms of Rule 6(5)(d)(iii) of the Rules of the High Court to the effect that at the hearing of the application they intended to raise the following questions of law:

"1. The application does not comply with the provisions of rule 6(1) in that the *"facts upon"* which the applicants rely on for relief, are not set out in respect of the different forms of relief claimed, alternatively it is not possible to identify which fact is tendered in respect of which relief claimed;

2. The second to fifteenth applicants' applications are *void ab initio*, in that they are not brought on *"notice of motion supported by affidavit"* as envisaged in rule 6(1). Although second to fifteenth

applicants deposed to affidavits, they have not signed notices of motion, alternatively;

3. In the event that the notice of motion signed by August Maletzky is intended to be a notice of motion for all applicants, such applications are still *void ab initio* in that:

3.1 on August Malezky's own version, he is not authorised to bring the application on behalf of any of the applicants; alternatively

3.2 should Maletzky purport to act as a legal practitioner for and on behalf of second to fifteenth applicants, the applications on behalf of the second to fifteenth applicants are illegal, and constitutes a nullity for the same reasons as advanced in *Compania Romana de Persuit (SA) v Rosteve Fishing (Pty) Ltd and Tsasos Shipping Namibia (Pty) Ltd (Intervening): In re Rosteve Fishing (Pty) Ltd v MFV 'Captain B1': her owners and all interested in her,* 2002 NR 297, as the said Malezky is not a duly qualified legal practitioner.

2. The relief claimed in prayers 2 to 17 is not enforceable with reference only to the relief claimed itself (in other words, it is not permissible to ask relief which, for instance, declares that the sale of a house below its reasonable market value, is unconstitutional). The relief claimed is

vague, not sufficiently definite and distinct to give rise to an efforceable order and will only result in a *brutum fulmen*.

3. First and second applicants appear to be relying on the constitution for the relief sought is of "universal application". The respondents submit that the first and second applicants do not have *locus standi* on constitutional grounds, or otherwise, because they are not "aggrieved persons" as contemplated in Article 25(2) of the Constitution, nor have they disclosed any direct and substantial interest of the relief claimed. In fact, the declaratory relief first and second applicant claim is of a mere academic and abstract nature and no case has been made out that they have sufficient interest for declaratory relief as envisaged in section 16 of the High Court Act, Act 16 of 1990.

Wherefore Respondents pray that the applications be struck from the roll with costs.

[3] During the hearing the 1st, 2nd, 3rd and 6th Respondents were represented by Mr Hinda instructed by Government Attorney. The 7th, 11th, 16th, 17th, 18th and 27th Respondents were represented by Mr Heathcote instructed by various legal firms. The 1st, 2nd, 3rd, 6th, 7th and 12th Applicants appeared in person. The rest of the Applicants were neither represented nor did they appear.

[4] The main application by the Applicants seeking relief was based on alleged constitutional rights and what has been referred to as "universal application."

[5] The Applicants applied for condonation for non-compliance with the Rules of this Court for the late filing of the Heads of Argument. The Respondents in this hearing did not oppose the application and the Court accordingly granted it.

[6] The founding affidavit accompanying the Notice of Motion of 9 October 2009 was deposed to by Mr August Maletzky the 1st Applicant. The 1st Applicant was the only signatory to the Notice of Motion. The rest of the Applicants filed confirmatory affidavits.

[7] In the founding affidavit, the 1st Applicant states that the Applicants had come to Court with a constitutional challenge which is predicated *inter alia* on the following contention:

> "*I am the first applicant in the matter. Notwithstanding the fact that I pay municipal rates and taxes, my legal standing to bring this application is derived from the fact that the relief sought in the notice of motion is of universal application and therefore I have legal standing to bring this application in my personal capacity as an Applicant in the matter. The content of this affidavit read with the affidavits of the second to fifteenth Applicants, will show the smooth uninterrupted operation of human exploitation in post independent Namibia."*

The 3rd Applicant had also stated in his affidavit that he has *locus standi* in the terms similar to those stated by the 1st Applicant he states:

> *"I am the third applicant in this matter. Notwithstanding the fact that I pay municipal rates and taxes, my legal standing to bring this application is derived from the fact that the relief sought in the notice of motion is of universal application and therefore I have the legal standing to bring this*

application in my personal capacity as an Applicant in this matter. The content of this affidavit read with the affidavits of the first to fifteenth Applicants, will show the smooth uninterrupted operation of human exploitation in post independent Namibia."

[8] At this stage of the proceedings all I am called upon to do is to consider and determine questions of law raised by the 1st, 2nd, 3rd, 7th, 11th, 16th, 17t and 27th Respondents and I wish to deal with them in the following order.

1. That the application does not comply with the provisions of Rule 6 (1).

It was argued on behalf of the Respondents that the notice of motion constitutes a nullity because it was only signed by the 1st Applicant. Underneath the 1st Applicant's signature there appears the following entry:

"August Maletzky and Applicants (Emphasis added)

c/o African Labour & Human Rights Centre

2nd Floor, Suite, 206, Continental Building

Independence Avenue, Windhoek".

It was submitted that the 1st Applicant there created an impression that he signed the notice of motion on his own behalf and on behalf of the other Applicants. However, according to the 1st Applicant's own version, he is not authorised to bring the application on behalf of the other Applicants. When an application is made by one person on behalf of another, it is necessary to make an affidavit that the person is authorised

to bring the application. This Court was referred to several authorities by both counsel for the Respondents. One such authority is:

Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) (2004) 2 A11 SA 609) at 624 F – H Streicher JA said the following:

"… The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised".

[9] It was further argued on behalf of the Respondents that even if the 1st Applicant was authorised to institute these proceedings on behalf of others, he is not a legal practitioner as envisaged in the Legal Practitioners, Act 1995 (Act No. 15 of 1995). Therefore, so it was contended, since the other Applicants did not sign, then the notice of motion is a nullity.

[10] On the other hand, the 1st Applicant submitted that the signature of a Court document is a burden and has been a burden to most of the Applicants in this matter and that the full bench of the Namibian High Court is seized with the matter as to when an Applicant can sign on behalf of another Applicant and that the matter will be considered during the Rule 30 application in this matter which is pending before the Full Bench. He further argued that

> *"seeking to litigate the same matter before this court is nothing else than to seek to sow confusion and uncertainly in this Court".*

1st Applicant further argued that although the notice of motion was signed by him alone, the other Applicants signed confirmatory affidavits in which they

embrace his statement. In support of his argument he relies on a judgment of this Court in the matter of *The Registrar of Friendly Society v Liberty Friendly Society & Another* Case No. A 174/2007 unreported (delivered on 07-07-2008) at p 5 paragraph (7) where it was stated that:

> "Thus for example a court may even condone a document that was not signed at all by legal practitioners".

This court had the benefit to peruse the matter referred to by the 1st Applicant. In fact the paragraph relied on is paragraph (7) on page 6 of the cyclostyled judgment and not page 5 as stated. First Applicant continued to argue that some of the Applicants in this matter were senior members of the community who were unable to read or write and explaining any document to them takes time and patience. Therefore in the light of the above mentioned case the court should condone the the fact that the notice of motion was not signed by other Applicants.

[11] The remarks in the passage in the *Registrar of Friendly Society* case *(supra)* relied on by the 1st Applicant were made during the consideration of certain points raised by the 1st Applicant who was the 2nd Respondent in that case. The first concerned the fact that the notice of motion in the case was signed by an employee of one of the parties who was an admitted legal practitioner of the Court on behalf of the instructed legal practitioner. The 1st Applicant argued that the act of signing rendered the whole application an irregular proceeding and on the basis of that alleged irregularity, he sought an order discharging the *rule nisi*.

[12] Frank, AJ held that although he regarded the conduct complained of as being highly undesirable, he did not regard it as a vitiating irregularity. He held furthermore in any event, if it had been an irregularity, but not a vitiating one, the Court would have had the power to condone that irregularity.

[13] At page 6, the second part of paragraph (7) he reasoned thus:

> *"In view of what is set out by Innes CJ above in the quotation which I referred to, I cannot accept that this is a vitiating irregularity. I do however agree that it is highly undesirable practice, and I am not sure whether it is professional or ethical conduct in terms of the rules of the Law Society. The papers in front of me however, do indicate that a complaint had been laid in this regard with the Law Society and with that as a fait accompli I leave the matter at that. I only wish to mention that, even if it was an irregularity, but not a vitiating irregularity, I would have had the power to condone a document that was not signed at all by legal practitioners. See Fortune v Fortune 1996 (2) SA 550 (C) and specifically the cases referred to at 552 A-B".*

[14] What was set out by Innes CJ in the quotation referred to by Frank AJ was said in the old case of *Donovan v Bevan* 1909 TS 723 at page 725. After having dealt with the quotation by Innes CJ, Frank AJ, concluded in paragraph (6) at page 5 of the judgment.

> *"As evident from the Donavan case and the reasoning thereof, one legal practitioner may approach another legal practitioner to sign on his behalf. What he cannot do is approach a lay person who wouldn't be qualified or wouldn't be duly admitted and enrolled as such. It follows from the aforegoing that the point raised relating to the signature itself thus cannot be sustained".*

[15] I do not understand Frank AJ there to say that a Court could condone a document that was signed by a person who was not a legal practitioner on behalf of another lay litigant. Nor do I did understand the learned Judge to be saying that a lay litigant can sign a Notice of Motion on behalf of another lay litigant. The case of *Donovan v Bevan (supra)* in fact makes it abundantly clear that, that cannot be done. The case of the *Registrar of Friendly Society (supra)* is therefore not of assistance to the first Applicant.

[16] As far as the issue of the 1st Applicant attempting to be a legal practitioner representing the interests of others is concerned, the 1st Applicant argued that it was held by the South African Constitutional Court in

Dawood v Minister of Home Affairs 2003 (3) SA 936 where it was held that:

> *"Any person aggrieved by a violation of a fundamental right of another may approach the appropriate division of the High Court for appropriate relief".*

I will return to this point at a later stage when considering the issue of *locus standi*.

The other Applicants who were present did not make submissions in respect of the points in *limine* raised as they associated themselves with the submissions made by the 1st Applicant.

[17] It is clear from the documents before me that the 1st Applicant signed the Notice of Motion alone where it is indicated "August Maletzky and Applicants". Rule 6 (5) (a) of the Rules of this court stipulates that:

> *"Every Application other than the one brought exparte shall be brought on notice of motion as near as may be in accordance with form 2 (b) of the First Schedule and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given."*

Form 2(b) expressly makes provision for the signature of the Applicant or his/her counsel.

Rule 6 (1) stipulates that:

> *"Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the Applicant relies for the relief."*

When an Applicant decides to institute application proceedings she/he must set out the facts and the provisions of the law on which his application relies, because the Applicant must fall or stand by his or her affidavit:

[18] In this case the 2nd – 15th Applicants could not legally authorize the institution of this proceedings by the 1st Applicant because the 1st Applicant is not a legal practitioner as defined by the Legal Practitioners Act 1995, (Act No. 15 of 1995. Section 21 of the Legal Practitioners Act, (Act No. 15 of 1995 reads as follows:

1. A person who is not enrolled as a legal practitioner shall not –

> *"(a) practice, or in any manner hold himself or herself out as or pretend to be a legal practitioner;*
>
> *(b) make use of the title of legal practitioner, advocate or attorney or any other word, name, title; designation or description implying or tending to induce the belief that he or she is a legal practitioner or is recognised by law as such;*

(c) issue out any summons or process or commence, carry on or defend any action, suit or other proceedings in any court of law in the name or on behalf of any other person except insofar as it is authorised by any other law;

(d) perform any act which in terms of this Act or any regulation made under section 81 (2) (d), he or she is prohibited from performing.

2. A person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall on conviction pay a fine not exceeding N$100.000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment".

[19] The 1st Applicant in an attempt to justify the conduct of signing the notice of motion on behalf of the other Applicants, as earlier stated, argued that some of the Applicants in this matter are senior members of the community who are unable to read or write and explaining any document to them takes time and patience. Therefore, he argued that the court must condone the fact that a notice of motion was not signed by 2nd – 15th Applicants.

[20] The Rules of Court requires that the process of court must be signed either by a litigant personally or his/her legal representative. The wording of section 21 of the Legal Practitioners Act, 1995 is stated in clear terms which does not leave any ambiguity. The language used in the section is of imperative nature and should strictly be observed.

It was stated in *Compania Romana De Pescut SA vs Rosteve Fishing* 2002 NR 297 at 302 (C-D) as follows:

"The legislative purpose behind the section is clear: it seeks to protect the public against charlatans masguerading as legal practitioners who seek to

> *prey on the misery and money of its members; it serves the public interest by creating an identifiable and regulated pool of fit, proper and qualified professionals to render services of a legal nature and it is aimed at protecting, maintaining and enhancing the integrity and effectiveness of the legal profession, the judicial process and the administration of justice in general".*

[21] In the light of the above legal requirements it goes without saying that the 1st Applicant cannot institute legal proceedings on behalf of others as he is not a legal practitioner in terms of the Legal Practioners's Act. Therefore, the Notice of Motion which was signed by the 1st Applicant on behalf of the 2nd – 15th Applicants is a nullity and it is void *ab initio* as far as the 2nd – 15th Applicants are concerned; they failed to sign it.

[22] I will now consider the points in *limine* raised regarding the *locus standi*, and I wish to confine myself to the 1st and 3rd Applicants in this regard.

[23] It was argued on behalf of the Respondents that the 1st and 3rd Applicants do not have *locus standi* to bring this application in their own name on the basis that the relief sought in the Notice of Motion is of universal application. It would appear that the 1st and 3rd Applicants are relying on Article 25 (2) of the Namibian Constitution for the relief claimed. It was submitted on behalf of the Respondents that the above Applicants did not establish that they have *locus standi* on constitutional grounds or otherwise because they are not aggrieved persons as contemplated in Article 25 (2) of the Namibian Constitution, nor had they disclosed any direct and substantial interest in the relief claimed.

[24] This court was referred to several authorities by Mr Heathcote and Mr Hinda as per their heads of argument in this regard *inter alia*:

United Watch and Diamond Company (Pty) Ltd and Others v Disa Hotels Ltd and Another 1972 (4) SA 409 (C) at 415 F-H as per Corbett J as he then was.

> *"In Henri Viljoen (Pty) Ltd. v Awerbuch Brothers, 1953 (2) SA 151 (O), HORWITZ, A.J.P. (with whom VAN BLERK, J., concurred) analysed the concept of such a 'direct and substantial interest' and after an exhaustive review of the authorities came to the conclusion that it connotes (see p. 169) –*
>
> > *'…an interest in the right which is the subject-matter of the litigation and… not merely a financial interest which is only an indirect interest in such litigation'.*
>
> *This view of what constitutes a direct and substantial interest has been referred to and adopted in a number of subsequent decisions, including two in this Division …, and it is generally accepted that what is required is a legal interest in the subject matter of the action which could be prejudicially affected by the judgment of the Court…"*

See also: *Kerry McNamara Architects Inc and Others v Minister of Works, Transport and Communication and Others 2000 NR 1 (HC) at 9I-10B*.

[25] On the other hand the 1st Applicant argued that in relation to *locus standi*, any person aggrieved by a violation of a fundamental right of another may approach the High Court for an appropriate relief. In order to support his argument he referred to the case of *Dawood v Minister of Home Affairs* 2003 (3)

SA 936 as well as Article 25 (2) of the Namibian Constitution. The other Applicants had also associated themselves with this argument.

[26] In determining the point in *limine* concerning the question of *locus standi* of the 1st and 2nd Applicants I must look at the provisions of Article 25 (2) of the Namibian Constitution and give a meaning to its interpretation and application. Article 25 (2) provides as follows:

> *Aggrieved persons who claim that a fundamental right of freedom guaranteed by this constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom.…"*

[27] Concerning the interpretation and application of Article 25 (2) of the Namibian Constitution this Court said the following in *Jacob Alexander v The Minister of Justice and Others* Case No. A 210/2007 (unreported judgment delivered on 2 July 2008 at p 38.

> *"… in every application where an Applicant relies on Article 25 (2) of the Constitution, the threshhold he or she must cross in order to persuade a competent court that she is an "aggrieved" person and that a human right guaranteed to him or her by the constitution has already been violated (infringed) or is likely to be violated or it is immediately in danger of being violated (threatened)".*

[28] When the matter went on appeal in *Jacob Alexander v The Minister of Justice and Others* Case No. SA 32/2008 (unreported judgment delivered on 9 April 2010 at p. 31 Strydom AJA, stated the following:

The standing of a party to approach a Court to protect him/her against unlawful interference with his/her rights is dependent on whether his or her rights are infringed or there is a threat of such infringement.

[29] An aggrieved person within the Constitutional context signifies someone whose fundamental rights or freedoms guaranteed by the constitution that has been infringed or threatened. Article 25 (2) was not intended to widen the ambit to include persons who would otherwise not have had standing to bring proceedings. The Namibian Constitution has, unlike the South African Constitution, not extended the common law requirements of *locus standi*.

See: *Kerry McNamara Architects supra* at (11 F-J).

[30] Mr Heathcote rightly pointed out that Article 38 of the South African Constitution of 1996 provides as follows.

> *"Anyone listed in this section has the right to approach a competent court, alleging that a right in the bill of rights has been infringed or threatened, and the court may grant relief, including a declaration of rights. The persons who may approach a court are –*
>
> *(a) anyone acting in their own interest;*
> *(b) anyone acting on behalf of another person who cannot act in their own name;*
> *(c) anyone acting as a member of, or in the interest of, a group or class of persons;*
> *(d) anyone acting in the public interest; and*
> *(e) an association acting in the interest of its members."*

[31] It is abundantly clear from the wording of Article 38 of the South African Constitution that there was a deliberate intention on the part of drafters to widen the scope for legal standing unlike the Namibian Constitution which limits the right of action to aggrieved persons only. There is no provision in the Namibian Constitution which expressly authorizes *locus standi* to persons acting as a member of or in the interest of a group or class of persons or acting in the public interest.

[32] For the enforcement of fundamental rights and freedoms in terms of Article 25 (2) 1st and 3rd Applicants must show that they are aggrieved persons on the basis that a right guaranteed to them had been infringed or that there is a threat of such infringement.

[33] This Court is now called upon to determine whether the 1st and 3rd Applicants are aggrieved persons within the meaning of Article 25 (2) of the Namibian Constitution.

[34] The party who institutes proceedings should allege and prove that he has a *locus standi*. It is a requisite for the 1st and 3rd Applicant to show in their founding affidavit that they are aggrieved persons whose rights had been infringed or that there is a threat of such infringement. They also need to prove that they have direct and substantial interest in the matter. At the pain of being repetitive the 1st Applicant in his founding affidavit merely stated that:

> "*I am the first applicant in the matter. Notwithstanding the fact that I pay municipal rates and taxes, my legal standing to bring this application is*

> *derived from the fact that the relief sought in the notice of motion is of universal application and therefore I have legal standing to bring this application in my personal capacity as an Applicant in the matter.*

Whilst on the other hand the 3rd Applicant said the following:

> *"I am the third applicant in this matter. Notwithstanding the fact that I pay municipal rates and taxes, my legal standing to bring this application is derived from the fact that the relief sought in the notice of motion is of universal application and therefore I have the legal standing to bring this application in my personal capacity as an Applicant in this matter.*

[35] The aforementioned statements do not clothe them with *locus standi* entitling them to enforce any right in terms of Article 25 (2) of the Namibian Constitution. In view of this finding, it is my conclusion that the 1st and 3rd Applicants failed to show that they are aggrieved persons within the meaning of Article 25 (2). Accordingly, I uphold the points *in limine* by the 1st, 2nd, 3rd, 6th, 7th, 11th, 16th, 17th, 18th and 27th Respondents challenging the *locus standi* of the 1st and 3rd Applicants.

[36] Because of the conclusion I have arrived at, I do not find it necessary to decide the rest of the points raised by the parties.

In the result the following order is made:

(1) The Notice of Motion signed by the 1st Applicant on behalf of the 2nd – 15th Applicants is a nullity and is *void ab initio* in respect of 2nd to 15th Applicants.

(2) The 1st and 3rd Applicants have no *locus standi* in the matter.

(3) The points *in limine* raised by 1st, 2nd, 3rd, 6th, 7th, 11th, 16th, 17th,18th and 27th Respondents are upheld.

(4) The matter is struck from the roll with costs in favour of the above mentioned Respondents against the 1st, 2nd, 3rd, 6th, 7th, and 12th Applicants. The 1st, 2nd, 3rd, 6th, 7th, and 12th Applicants must jointly and severally pay the costs of the 1st, 2nd, 3rd, 6th, 7th, 11th, 16th, 17th, 18th and 27th Respondents, the one paying the other to be absolved. Such costs to include the costs occasioned by the employment of one instructing counsel and one instructed counsel.

SHIVUTE, J

COUNSEL ON BEHALF OF THE 1st, 2nd, 3rd and 6th RESPONDENTS:

Adv. Hinda

Instructed by: Government Attorney

COUNSEL ON BEHALF OF THE 7th, 11th, 16th, 17th, 18th AND 27th RESPONDENTS:

Adv. Heathcote

Instructed by: Various Law Firms

1ST, 2ND, 3RD, 6TH, 7TH AND 12 APPLICANTS APPEARED: In Person